Datatreasury Corporation v. City National Corporation et al Doc. 25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION	§	
PLAINTIFF	§	
vs.	§	No. 2:06cv72
	§	2:06cv165
WELLS FARGO & COMPANY, *et al*	§	JURY TRIAL DEMANDED
DEFENDANTS	§	

PLAINTIFF'S MOTION TO AUTHORIZE JURISDICTIONAL DISCOVERY AGAINST DEFENDANTS CITY NATIONAL CORPORATION AND CITY NATIONAL BANK

Pursuant to Federal Rule of Civil Procedure 26(a) & (d) and Local Rule CV-26(d), Plaintiff, DataTreasury Corporation ("DataTreasury"), files this Motion to Authorize Jurisdictional Discovery against Defendants City National Corporation and City National Bank ("City National") and states:

1. DataTreasury filed its original Complaint in this patent infringement action on February 27, 2006. Before any Defendant answered, Plaintiff filed a First Amended Complaint on March 28, 2006.

2. On June 1, 2006, City National filed a Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2). In the Motion, City National contends that this Court lacks personal jurisdiction over it and thus the claims against it should be dismissed.

3. DataTreasury has filed a Response to City National's Motion to Dismiss. In its Response, DataTreasury outlines the basis for this Court's jurisdiction over City National, and discusses in detail the numerous troubling inconsistencies between the sworn statement of

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Defendants' executives filed in this case and the representations these Defendants make elsewhere to the general public and the federal government.

4. However, in the event that the Court believes additional evidence on these issues is necessary, DataTreasury requests that the Court enter an Order authorizing it to conduct specific jurisdictional discovery regarding City National. DataTreasury anticipates that this discovery would entail the following issues: (A) document production surrounding City National’s operations in Texas as described in DataTreasury's Response; (B) documents and depositions regarding City National's performance of infringing activities within the State of Texas; (C) depositions of the persons with the most knowledge of various sworn statements made pursuant to the Sarbanes-Oxley Act by City National executives in their most recent 10-K; (D) depositions of persons responsible for the development, marketing, and use of Defendants' online banking services discussed in Plaintiff's response; (E) document productions surrounding the activities of the City National executives that hold dual positions with its subsidiary entities, including Board of Directors’ meeting minutes, internal memos, emails and correspondence files, and a multitude of other documents surrounding these executives’ activities; and (F) depositions of the dual position executives identified in Plaintiff’s Response to Defendants' Motion to Dismiss. Other discovery may be necessary as well, but these items are certainly relevant to City National’s claims that it does not conduct business in Texas and within this District.

5. The requested discovery and disclosures are relevant to the jurisdictional defenses raised by City National. In addition, the discovery and disclosures will provide DataTreasury with additional evidence to include in an Amended Complaint and to submit in amended opposition to Defendants' Motion to Dismiss. Thus, the Court should authorize and order the requested discovery and disclosures.

6. Pursuant to Federal Rule of Civil Procedure 26(a) & (d) and Local Rule CV-26(d) and for those reasons stated herein, DataTreasury respectfully requests that the Court grant this Motion. Specifically, DataTreasury requests: (1) that it be allowed to propound interrogatories, requests for production, and requests for admissions to City National dealing specifically with the jurisdictional issues; (2) that these discovery requests not count against the limited number of discovery requests available to Plaintiff under the Federal Rules of Civil Procedure and this Court's local rules; (3) that it be allowed to depose each of the City National executives discussed in DataTreasury's Response to Defendants' Motion; (4) that it be allowed to depose Rule 30(b)(6) representatives with the most knowledge of the jurisdictional issues raised by City National and the online banking issues discussed above; (5) that the Defendant be ordered to produce all documents and information relevant to their jurisdictional defenses within 30 days; and (6) that DataTreasury be allowed to file an amended Response to City National's Motion and an Amended Complaint after receiving this discovery.

7. Before filing this Motion, Counsel for DataTreasury conferred in good faith with counsel for City National with regard to the requests in this motion. Unfortunately, the parties cannot resolve this dispute without Court intervention.

WHEREFORE, DataTreasury prays that the Court grant its Motion and enter an order authorizing the requested discovery and mandating the requested disclosures.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFF DATATREASURY CORPORATION

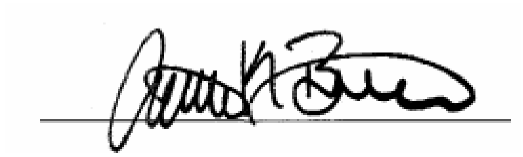
CERTIFICATE OF CONFERENCE

I hereby certify that Plaintiff's counsel has conferred with Defendant's counsel regarding the above Motion, and they indicated that they do oppose the filing of such Motion.

ANTHONY K. BRUSTER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all counsel of record through the Court's electronic mail this 23rd day of June, 2006.



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